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7                   UNITED STATES DISTRICT COURT  
8                   WESTERN DISTRICT OF WASHINGTON  
9                   AT SEATTLE

10                   SUSAN CHEN, et al.,

CASE NO. C16-1877JLR

11                   Plaintiffs,

ORDER

12                   v.

13                   NATALIE D'AMICO, et al.,

14                   Defendants.

15                   Before the court is Plaintiff J.L.'s motion for partial summary judgment. (MSJ  
16 (Dkt. # 349); Reply (Dkt. # 358).) J.L. moves to dismiss Defendants Kimberly Danner,  
17 Jill Kegel, and the Washington State Department of Children, Youth, and Families's  
18 (collectively, the "State Defendants") affirmative defense L, in which the State  
19 Defendants allege they have immunity against J.L. and Plaintiff Susan Chen's (together,  
20 "Plaintiffs") negligent investigation claim. (MSJ at 1; *see* Ans. to 4th Am. Compl. (Dkt.  
21 # 185) at 21 ("The State Defendants have no liability under RCW 26.44 for negligent

investigation as their conduct was not intentional, malicious, reckless, or grossly negligent per RCW 4.24.595.”).)

In response, the State Defendants represent that they “have no intention of pursuing affirmative defense L at trial and do not oppose the Court’s striking of that defense[.]” (Resp. (Dkt. # 357) at 2.) They point out that RCW 4.24.595(1), the statute on which they based their affirmative defense, does not apply to Plaintiffs’ remaining negligent investigation claim because that claim is based only on conduct that occurred after the shelter care hearing at issue in this case. (*Id.* (citing 9th Cir. Memo. (Dkt. # 297) at 4.).) In reply, J.L. represents that the State Defendants never indicated that they would waive affirmative defense L until they filed their response. (Reply at 1-2.) He urges the court to grant his motion in light of the State Defendants’ nonopposition. (*Id.* at 2.)

Because the State Defendants do not oppose Plaintiffs' request to dismiss affirmative defense L, the court GRANTS J.L.'s motion for partial summary judgment (Dkt. # 349). Affirmative defense L is STRICKEN from the State Defendants' answer to Plaintiffs' fourth amended complaint.

Dated this 15th day of November, 2024.



Jim R. Blint

JAMES L. ROBART  
United States District Judge